Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The Supreme Court Of The United States

BRENDA J. FORD, Petitioner,

v.

COUNTY OF HAWAI'I; COUNTY CLERK, COUNTY OF HAWAI'I; LLOYD VAN DE CAR, CHAIRMAN, COUNTY OF HAWAI'I 2001 REAPPORTIONMENT COMMISSION, Respondent.

On Petition for Writ of Certiorari

to the

Supreme Court of the State of Hawai'i

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QUESTIONS
BRIEF
APPENDIX 1

REDISTRICTING (REAPPORTIONMENT) CASE QUESTIONS PRESENTED

1. Did the Hawai'i State Supreme Court ("HSSC"), and/or the Circuit Court of the Third Circuit ("Third Circuit Court") violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ("no state shall ... deny to any person within its jurisdiction the equal protection of the laws") when both courts upheld the Hawai'i County Reapportionment Commission's ("RC") redistricting plan although that plan exceeded the 10% standard without justification?

2. Did the HSSC err when it allowed the RC's redistricting plan to stand because it was "only slightly over the acceptable 10% standard" (10.89%) when today's computer technology makes it practicable to keep the total deviation below 10%?

3. Did the HSSC and/or the Third Circuit Court err when each allowed the RC's plan to stand when that plan does not provide equal representation, dilutes the weight of the votes in Council Districts 1, 3, 4, 5, 6, 7, 8, 9, and enhances the votes of Council District 2 by incorrectly including 810 of 871 nonresidents in District 2?

4. Did the HSSC and/or the Third Circuit Court err in allowing the RC's plan to stand when: a) districts did not have equal resident populations because the total deviation exceeds the 10% standard b) districts were not as compact as practicable, c) communities of interest were fractured, and d) favoring persons and incumbent protection gerrymandering was allowed?

5. Did the HSSC and/or the RC err in allowing the RC's plan to stand when the RC ignored documented growth rates, and placed the most positive deviation percentage in areas of high growth and the most negative

deviation in the areas of low growth thereby increasingly exacerbating vote dilution for the next ten years?

6. In local redistricting cases, shall Federal laws and binding U.S. Supreme Court case precedents that have been extended to include municipal governments, along with mandated State and/or County redistricting criteria, be required to be incorporated into the RC's plan unless justification for not including precedents and criteria is provided by the RC?

7. Shall the RC be required to publicly and formally adopt, as close to the inception of the redistricting process as practicable, all redistricting policies and provide written documentation of those policies as part of the submission of its final redistricting plan?

8. Did the mere mention of a valid redistricting criterion by one Commissioner without a vote of the RC's other Commissioners constitute "consideration" and "adoption" of either that criteria or a rational state policy?

9. Did the HSSC err in imposing its own "rational state policy" of "inclusiveness and equal representation" on the RC's redistricting plan when the RC failed to provide a verbal explanation, or a formally adopted, written policy?

10. Did the HSSC err when it ruled that the RC evidenced an intent of a "rational state policy" of "inclusiveness and equal representation" based on a Commissioner's hearsay and incorrect information, the RC's use of the incorrect population base, and a total deviation in excess of 10% without justification?

11. Did the RC abuse its discretion by not explicitly addressing all of the statutory factors, particularly equal population, when it voted against even consideration of the

Appellant's plan which had a lower total deviation and addressed statutory factors?

12. Did the RC err when it voted to not consider an alternate plan that was presented in ample time that had a lower deviation, greater compactness, and addressed statutory factors?

13. Can the U.S. Supreme Court review issues in this case de novo, or review issues that were de novo to the HSSC, that were stipulated out of the Appellant's case in order to present an appeal to the HSSC in a timely manner?

PARTIES TO THE PROCEEDING

Plaintiffs-Appellants

Citizens for Equitable and Responsible Government, a Hawai'i nonprofit corporation;
Brenda J. Ford
Stanley A. Boren
Floyd H. Lundquist
Marlene E. Lundquist
Ronald C. Phillips

Plaintiffs-Appellees

Beverly Byouk
Sandra W. Scarr

Respondents

County of Hawai'i
Al Konishi, County Clerk, County of Hawai'i
Lloyd Van De Car, 2001 Chairman of the Reapportionment Commission, County of Hawai'i

TABLE OF CONTENTS

	Page
Questions Presented	i
List of parties to the proceeding	iv
Table of Authorities	viii
ARGUMENT FOR THE CASE	
Opinion or Judgment Below	1
Statement of Jurisdiction	1
Constitutional Provisions, Statutes, and Regulations	2
Statement of the Case	2
Reasons to Grant Writ by Question Number	3
1. Violation of the Equal Protection Clause	3
2. "Slightly" over the 10% standard is illegal	8
3. Vote dilution, vote enhancement, and Supervoters	9
4. Legal criteria ignored	10
a. Plus or Minus 5% deviation and due diligence	10
b. Districts not as compact as practicable	11
c. Plan did not preserve communities of interest	12
d. Incumbent Protection gerrymander	13
5. Documented growth rates ignored	14
6. Redistricting laws and precedents extended to municipal governments	15
7. Formal adoption of redistricting criteria and policy	16

8. Mere mention of valid criteria should not be considered adoption of criteria 18

9. Imposition of rational state policy with no basis in fact 20

10. Hearsay evidence used to justify "inclusiveness and equal representation" 20

11. Abuse of discretion by not explicating addressing statutory factors 23

12. Refusal to consider an alternate plan 24

13. Stipulated de novo issues 25

Conclusion 27

Appendix 1

Hawai'i State Supreme Court - Order Granting in Part and Denying in Part Motion for reconsideration, 9-22-05 A 1

Dissent A 19

Hawai'i State Supreme Court - Order of Correction, 7-28-05 A 22

Hawai'i State Supreme Court - Opinion on the Appeal from the Third Circuit Court, 7-22-05 A 24

Dissent A 48

Third Circuit Court - Final Judgment 1-24-03 A 50

Third Circuit Court - Order Denying Plaintiffs' Motion for Partial Summary Judgment of the Complaint and Granting Partial Summary for Defendants, 7-19-02 A 52

United States Constitution, Fourteenth Amendment, Equal Protection Clause A 55

Hawai'i County Charter, Article III, Section 3-17 A 57

U.S. Code, Title 28, Part IV, Chapter 81, § 1257 A 59

Rules of the Supreme Court of the United States A 60

Appendix 2

Reapportionment Commission Hearings and Meetings -

05-03-01 (Partial Transcript) A 62

06-22-01 (Partial Transcript) A 66

10-08-01 (Partial Transcript) A 70

10-18-01 (Partial Transcript) A 99

11-21-01 (Partial Transcript) A 102

12-18-01 (Partial Transcript) A 121

United States Election Project A 144

Redistricting Criteria Used by Plaintiffs A 153

How To Draw Redistricting Plans That Will Stand Up In Court, Peter Wattson A 156

Hawaii County Data Book 2000 A 222

TABLE OF AUTHORITIES

Cases	Page
Abate v. Mundt, 403-U.S. 182 (1971)	7
Avery v. Midland County 390 U.S. 474	4
Brown v. Thomson, 462 U.S. 835, 842-43 (1983)	4
Ely v. Klahr, 403 U.S. 108 (1971)	13, 14
Fujimoto v. Au, 95 Hawai'i 116, 137, 139 P. 3d 669, 720 (2001)	26
Gaffney c. Cummings, 412 U.S. 735	3, 8
Kenai Peninsula Borough v. State, 743 P.2d 1352 (Alaska 1987)	12
Kirkpatrick v Preisler, 394 U.S. 526 (1969) P. 535	6, 7, 15
Mahan v. Howell, 410 U.S. 315, 326 (1973)	4, 6, 7
Miller v. Johnson, 515 U.S. 900, 919-20 (1995)	12
Pac. Int'l Serv. Corp. v. Hurip, 76 Hawai'i 209, 213, 873 P. 2d 88, 92 (1994)	26
Reapportionment of Town of Hartland, 160 Vt. 9, 21-22	12
Reynolds v. Sims, 377 U.S. 533, 579 (1964)	5, 6, 10, 15

Riley v. Baxter County Election Commission,
843 S. W. 2d 831 (Ark. 1992) 28

Swann v. Adams,
385 U.S. 440, 444 (1967) 4, 7, 8, 10, 20

White v. Regester,
412 U.S. 755 (1973) 3, 6, 8

Wilson v. Eu,
1 Cal. 4th 707, 4 Cal. Rptr.2nd 379m 387 12

Ziols v. Rice, County Board of Commissioners,
No. C3-02-1667 Minn. App. (2003) 23, 24

Other Authorities

Black's Law Dictionary
Abridged Seventh Edition
Bryan A, Garner, Editor-in Chief
2000

How To Draw Redistricting Plans That Will Stand Up In Court
Peter S. Wattson, Counsel to the Minnesota State Senate

In The Supreme Court Of The United States

This case raises important questions regarding the redistricting of the smallest governmental units and the criteria, standards, precedents, and laws that apply to these local governments.

OPINION OR JUDGMENT BELOW

Hawai'i State Supreme Court

Order Granting in Part and Denying in Part in Motion for Reconsideration filed on September 27, 2005. The Dissenting Opinion by Justice Paula A. Nakayama with whom Chief Justice Ronald T. Y. Moon joins was issued the same day. (Page A 1)

Order of Correction (Case No. 25614) was issued on July 28, 2005 to correct the civil number to read: Civil No. 02-1-0092. It was filed on July 29, 2005. (Page A 22)

Opinion of the Court (No. 25614) was filed on July 26, 2005. It is reported at 108 Haw. 317. The Concurring and Dissenting Opinion by Justice Paula A. Nakayama with whom Chief Justice Ronald T. Y. Moon joins was issued the same day. (Page A 24)

Circuit Court, Third Circuit Court

Final Judgment (Civil No. 02-1-0092 (Hilo) (Declaratory Judgment) was filed on January 24, 2003. (Page A 50)

Order Denying Plaintiffs' Motion for Partial Summary Judgment of the Complaint and Granting Partial Summary Judgment for Defendants (Civil No. 02-1-0092 (Hilo). Date of filing was July 19, 2002. (Page A 52)

STATEMENT OF JURISDICTION

The Hawai'i State Supreme Court ruled in its Final Judgment on September 22, 2005 to uphold an illegal redistricting plan. (Page A 1)

The Fourteenth Amendment of the Constitution of the United States (Page A 55).

Hawai'i County Charter, Section 3-17 (Page A 57).

U. S. Code Title 28, Part IV, Chapter 81, § 1257, State courts; certiorari (Release date: 2005-09-29), (a). (Page A 59)

Rules of the Supreme Court of the United States (Page A 60).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Hawai'i State Supreme Court ("HSSC") has created compelling reasons for the U.S. Supreme Court ("this Court") to hear this case under Rule 10 (page A 60). The HSSC's decision violates Rule 10 in that its decision, in relevant part: (b) "conflicts with the decision of another state court of last resort or a U.S. court of appeals " and (c) "a state court ...has decided an important federal question in a way that conflicts with relevant decisions of this Court" in legislative redistricting.

The Fourteenth Amendment of the United States Constitution. (Page A 55)

The Charter of the County of Hawai'i, State of Hawai'i, Article III, Section 3-17. (Page A 57)

STATEMENT OF THE CASE

In 2001, the Hawai'i County Reapportionment Commission ("RC") designed a County Council redistricting plan that included nonresidents, exceeded the ten-percent standard for total deviation once nonresidents were removed, failed to adopt legal criteria, violated numerous redistricting criteria, and failed to justify any violations or deviations. The Commission voted to pass that plan on December 18, 2001 without knowing the actual, legal deviation (without nonresidents). (Page A 121)

On July 19, 2002, the Circuit Court of the Third Circuit ("Third Circuit Court") upheld the Commission's plan with its inclusion of nonresidents and violations of socio-economic criteria but did not enter its judgment (Page A 52). In order to obtain a judgment with which to appeal to the HSSC, the Plaintiffs were forced to negotiate with the